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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 377/88.

Transfer Application No: _____

DATE OF DECISION: 12/8/94

Ex. Capt. Manjot Singh, _____ Petitioner

Shri M. S. Ramamurthy, _____ Advocate for the Petitioners

Versus

Union Of India & Others, _____ Respondent

Shri A. I. Bhatkar for

Shri M. I. Sethna, _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

The Hon'ble Shri V. Ramakrishnan, Member (A).

1. To be referred to the Reporter or not ? No
2. Whether it needs to be circulated to other Benches of the Tribunal ? No


(V. RAMAKRISHNAN)
MEMBER (A).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 377/88.

Ex.Capt. Manjot Singh,
Assistant Personnel Manager,
Naval Dock Yard,
Bombay - 400 023.

... Applicant

V/s.

Union Of India & Others.

... Respondents.

CORAM :

1. Hon'ble Shri Justice M.S. Deshpande, Vice-Chairman.
2. Hon'ble Shri V. Ramakrishnan, Member (A).

APPEARANCES :

1. Shri M. S. Ramamurthy,
Counsel for the applicant.
2. Shri A.I. Bhatkar for
Shri M. I. Sethna, Counsel
for the Respondents.

JUDGEMENT

DATED : 14/8/97

¶ Per. Hon'ble Shri V. Ramakrishnan, Member (A) ¶.

1. The applicant, Shri Manjot Singh, who is presently serving as an Assistant Personnel Manager in the Naval Dockyard, Bombay, has sought for a direction from the Tribunal that his previous army service should count for the purpose of seniority in the civilian post he is now holding and to ~~set aside~~ the order dated 24.03.1988 issued by the Naval Headquarters, which denies him such a benefit, should be set aside.

2. The applicant joined Army as a Short

Service Commissioned Officer of the 28th Short Service Course (Non-Technical) and was commissioned with effect from 01.09.1979 in the Regiment of Artillery and was released on 28.11.1984 on completion of the period of 5 years of commissioned service. He stated that during the tenure of his service in the Army, he was on Operational/War Service from 22.11.1979 to 12.11.1983 in a high altitude area and served with utmost devotion to duty. He was released on 28.11.1984 on completion of the period of 5 years of commissioned service. Even after release from Commissioned Service, he was in the regular reserve of officers for the period upto 27.09.1989. After release from the Army, he got employed as a Civilian Gazetted Officer as a direct recruit in an unreserved vacancy by the Union Public Service Commission. On the basis of his performance at the interview, he was also granted three additional increments under FR 27. He draws our attention to the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules 1967 and 1971 which gives certain concessions to Released Emergency Service/Short Service Commissioned Officers, who were commissioned during a certain period in the matter of reservation of civilian posts and for seniority and pay for those who were appointed against the vacancies so reserved. These 1966 rules were in force upto 29.01.1971 and the 1971 rules extended it upto 29.01.1974. The applicant asserts that the concession as admissible in these rules in the matter of seniority should be extended to him as otherwise there will be discrimination among the Short Service

Commissioned Officers (for short SSCO) who joined the civilian service on different occasions and such policy will be violative of Articles 14 and 16 of the Constitution. In the reliefs sought for, the applicant, however, has not challenged the vires of any of these rules.

3. The respondents oppose the application on the ground that the benefit of seniority as contained in the reservation of vacancies rules referred to supra, is available only to those ECOs/SSCOs who are commissioned after 01.11.1962 but before 10.01.1968. The applicant admittedly was commissioned only on 01.09.1979. Besides this, these rules cease to be operative w.e.f. 29.01.1974, whereas the applicant joined the civilian post only in July 1985. These rules which were promulgated when the country was in a state of emergency on account of external aggression are thus not applicable to the applicant, who was not appointed against the vacancies reserved for the Released EC/SSC Officers.

4. We have heard Shri M. S. Ramamurthy, Learned Counsel for the applicant and Shri A. I. Bhatkar for Shri M. I. Sethna, Learned Standing Counsel for the Respondents.

5. Shri Ramamurthy submits forcefully that the benefit as provided in the Reservation Rules should be extended to the applicant, as his case is no different from those SSCOs who were recruited during

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the period from 01.11.1962 to 10.01.1968. He makes it clear that he is not challenging these rules. The 1966 and 1971 rules were framed in the context of Chinese Aggression in 1962 and Bangladesh Operation in 1971. During this period, the active hostilities ~~was~~ continued only for short periods. The intention behind the rules was that the Commissioned Officers who were serving in a war theatre should be given certain incentives. The applicant was also having Operational/War Service during the period from 22.09.1979 to 12.11.1983 which is borne out from a copy of the document attached to the application at page 23. He should therefore be treated as an Officer joining the Army in war operation and not for taking up a career, as the Short Service Commission was only for five years. The Learned Counsel also argues that the applicant on release from the Army, has joined a post in the same Ministry, namely the Ministry Of Defence and he continues to perform management functions. When his attention was drawn to the Supreme Court Judgement in Ram Janam Singh V/s. State Of U.P. and Another [1994 Supreme Court Cases (L&S) 716,] Shri Ramamurthy argues that this judgement will not automatically deny the benefit sought for by the applicant. He refers to the last portion of para 14 of the judgement, which reads as follows :-

"It need not be impressed that whenever any particular period spent in any other service by a person is added to the service to which such person joins later, it is bound to affect the seniority of persons who have already entered in the service. As such any period of earlier service should be taken into account for determination of seniority in the later

service only for some very compelling reasons which stand the test of reasonableness and on examination can be held to be free from arbitrariness."

The fact that the applicant had put in Operational/War Service for about four years would show that there are compelling reasons to give weightage of his earlier Army Service for the purpose of seniority.

6. He draws our attention to the judgement of the Principal Bench in Ex.Capt. H.R. Mehta & Others Versus Union Of India & Others decided on 11.03.1987 and annexed as exhibit 'G' and submits that this judgement also supports his contention that the ECOs/SSCOs is a category by itself and should be treated alike. He also mentions that ~~some~~ orders of the Tamilnadu Government in denying the concession of ECOs/SSCOs ~~on~~ ^{appointment as} /commercial ~~tax~~ officers were struck down by the Court. According to Shri Ramamurthy, in the facts and circumstances of the present case, we should give a direction that the applicant should get the benefit of seniority on the same lines as provided in the reservation ~~of~~ vacancies rules.

7. Shri Bhatkar for the respondents argues that the applicant has not challenged the vires of the rules ^{1 (21)} ~~1 (21)~~ and rule 4(1) of the Reservation of Vacancies Rules. It is admittedly the position that the applicant was commissioned as a SSCO on 01.09.1979 and joined the Civilian post in July 1985 and as such he cannot get the benefit of ~~these~~ rules. The Learned Standing Counsel submits that ~~the~~ the Supreme Court Judgement referred to

supra held that the U.P. rules which are parimateria with the Central Rules, were held to be valid.

Shri Bhatkar contends that on this short ground, the application should fail.

8. We have carefully considered the submissions of Shri Ramamurthy. The Learned Counsel does not dispute the fact that the ^{applicant} ~~application~~ is not automatically governed by the 1967 and 1971 rules, as he was neither commissioned within the period from 01.11.1962 to 10.01.1968 nor was he appointed against the vacancies reserved for Released S.S.C.Os. before 29.01.1974. He only wants that the benefit of these rules in respect of seniority should also be extended to the applicant, as his case is materially the same as those who are entitled to get the incentives as per the rules. The preferential treatment given to those who joined the Armed Force during emergency has been gone into by the Supreme Court during Ram Janam Singh's case. We may in this connection refer to the head-note 'B' of the judgement.

"B. Seniority-Notional Seniority-Preferential treatment to those who joined armed forces during emergency grant of notional seniority in civil service by taking into account service rendered in armed forces, held, is constitutionally valid but such benefit cannot be extended to those who joined armed force during normal times - Uttar Pradesh Non-Technical (Class-II) Services

(Reservation of Vacancies for the Demobilised Officers) Rules, 1968, R.2(1)-Uttar Pradesh Non-Technical (Class-II) Services (Reservation Of Vacancies for Demobilised Officers) Rules, 1973, R.3 - Uttar Pradesh Non-Technical (Class-II/ Group 'B') Services (Appointment of Demobilised Officers) Rules, 1980, R.3(b) - Constitution Of India, Arts. 14 and 16.

Emergency was imposed during the period 1.11.1962 to 10.1.1968 due to Indo-Chinese war and again on 3.12.1971 when Indo-Pak war broke out.

Held :

Preferential treatment given to person who had been commissioned between 1.11.1962 to 10.01.1968 and again on or after 3.12.1971 is based on the fact that such persons were commissioned when nation faced foreign aggression and the cry of the time was to save its honour. If such persons have been treated as a separate class for extending any benefit in the matter of seniority, none can make any grievance and the classification can be upheld on the touchstone of Articles 14 and 16 of the Constitution but there is no valid ground for extending the benefit to a person who joined after 10.01.1968 when the emergency was over and before 3.12.1971 when second emergency was imposed. Persons recruited to armed forces during the period intervening between two emergencies, were on the lookout for a career and joined armed forces of their own volition. It can be presumed that they were prepared for normal risk to which armed forces are exposed. If benefits are extended even to members of armed forces who joined during normal times, members of the civil services can make a legitimate grievance that their seniority is

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being affected. Period of service rendered elsewhere should be taken into account for determination of seniority in the later service only for the purpose of compelling reasons which stand the test of reasonableness."

9. In para 12 of the judgement, the Supreme Court observed that if the benefits extended to such persons who were commissioned during national emergencies are extended even to the members of the Armed Forces who joined during normal times, members of the Civil Services can make legitimate grievance that their seniority is being affected by persons recruited to the service after they had entered in the said service without therebeing any rational basis for the same."


10. The principle contained in the Supreme Court Judgement clearly applies to the present case. The applicant did not have any statutory entitlement for getting higher seniority and we are unable to agree with Shri Ramamurthy that his case is identical with those SSCOs/ECOs who were given certain concessions under the Reservation of Vacancies Rules. We necessarily have to hold that the applicant will not be entitled to the preferential treatment as available to SSCOs, as laid down in the Reservation Of Vacancies Rules. The fact that the applicant had to serve in difficult areas and had to perform operational/war service for some period cannot by itself support his case, as all Commissioned Officers in the Army are normally expected to perform such functions. The case of Shri H. R. Mehta decided

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by the Principal Bench dealt with the classification of permanent vacancies and temporary vacancies and we are informed that the applicant in that case had fulfilled the other requirement, of the Reservation of Vacancies rules. We are not aware of the details of the Tamil Nadu case referred to by Shri Ramamurthy and in any case, it is not of any avail to the applicant in the context of the Supreme Court decision rendered on 25.01.1994.

11. We therefore hold that the applicant is not entitled to the reliefs sought for. The application is accordingly dismissed with no order as to cost.


(V. RAMAKRISHNAN)
MEMBER (A).


(M. S. DESHPANDE)
VICE-CHAIRMAN.

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